IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

Crl.MC.No. 1185 of 2007()

CRIME NO.11/07 OF KONNY EXCISE
CRL.M.P.NO.1106/07 OF J.F.C.M-II, PATHANAMTHITTA

.....

PETITIONER:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COUT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

RESPONDENTS:

SHAJI SAMUEL, VETTIMOOTTIL VEEDU,
MEKKOZHUR KARA, MYLAPPRA.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1185 of 2007

Dated this the 1st day of June, 2007

ORDER

State is the petitioner in this application under Section 482 Cr.P.C and the State assails a direction issued by the learned Magistrate under Section 451 Cr.P.C releasing the vehicle to its registered owner.

2. The vehicle is an autorickshaw. It has allegedly been involved in the commission of an offence under the Kerala Abkari Act. Proceedings under Section 67(B) of the Kerala Abkari Act appear to be in the contemplation of the authorities under the Kerala Abkari Act. There is nothing to show that even a notice has been issued to initiate proceedings under Section 67(B) of the Kerala Abkari Act. The learned Magistrate dealt with the application for release of the vehicle and directed that the vehicle shall be released on condition that a bond is executed for Rs.50,000/- with two solvent sureties each for the like sum. Appropriate conditions have also beeen imposed. The learned Public Prosecutor for the State submits that during the pendency of proceedings under Section 67(B) of the Kerala Abkari Act, the learned Magistrate erred grossly in exercising his jurisdiction under Section 451 Cr.P.C. If at all such jurisdiction were to be validly invoked a condition similar to the one contemplated under Rule 4 of

the Abkari (Shops and Disposal) Rules must have been imposed. This in short is the contention of the learned Public Prosecutor for the State.

3. I find no merit in this contention. There is nothing to show that proceedings under Section 67(B) of the Kerala Abkari Act have been initiated. No notice has been issued. There is no submission before me that proceedings under Section 67(B) of the Kerala Abkari Act have actually commenced with issue of any notice. In fact, the submission at the Bar is that the chemical examiner's report is awaited to decide on the future course of action.

4. In these circumstances, I find that the court below has committed no error in directing the release of the vehicle under Section 451 Cr.P.C to its registered owner subject to appropriate conditions. The vehicle is an autorickshaw and bond for Rs.50,000/- has been insisted. The conditions imposed cannot be held to be inadequate.

5. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-